

# Exhibit A

1 sheet.

2 MR. SAYLES: But we also have the case law guidance  
3 that the net worth is based on the balance sheet which would  
4 be the assets and the liability.

5 THE COURT: Yes, including cash, which may be  
6 minimal.

7 MR. SAYLES: Yes.

8 THE COURT: But unless they're bankrupt, then there  
9 must be other assets which exceed liabilities. As far as I  
10 know -- and you help me out here, I may be wrong -- does  
11 anybody know whether or not such information is reportable or  
12 is required to be reported on an LLC's tax return?

13 MR. SAYLES: As a matter of fact, it's an LLP, Your  
14 Honor.

15 THE COURT: LLP, same difference, limited  
16 partnership.

17 MR. SAYLES: I'm not aware. I haven't personally  
18 seen the income tax returns for the corresponding years. I  
19 have seen the accountant's report.

20 THE COURT: Well, do they have or do they not have  
21 audited balance sheets?

22 MR. SAYLES: I do not believe they have audited.  
23 What I have been provided is a financial sheet. I don't  
24 believe they --

25 THE COURT: What is it and who prepared it?

1 MR. SAYLES: Pardon?

2 THE COURT: What is it and who prepared it?

3 MR. SAYLES: It was a report prepared by their  
4 accountant, Markham and Associates which outlined their net  
5 worth for 2011. It identified assets, income, things like  
6 that, information and basically provides a picture of their --

7 THE COURT: I'm sensitive to the issue of audited  
8 because we know that many small businesses don't have audited  
9 financials. This doesn't sound like an -- what is their  
10 annual revenue?

11 MR. SAYLES: I don't know that off the top of my  
12 head, Your Honor.

13 THE COURT: Did you do a -- is there a Dun and  
14 Bradstreet available for C&S, Mr. Bromberg?

15 MR. BROMBERG: I haven't tried running a D&B on them,  
16 Your Honor. There's a privately-held company.

17 THE COURT: Well, that doesn't mean anything. That's  
18 what D&B is for. That's exactly what you use D&B for,  
19 otherwise you go to the SEC and look up the case.

20 MR. BROMBERG: Good point. I haven't tried running a  
21 D&B on them.

22 MR. SAYLES: Your Honor, I would suggest as an  
23 initial process, start with the information that was ordered  
24 in Godson and I believe it's adequate. I believe it's  
25 comprehensive.

1 THE COURT: Well, that requires you to file -- to  
2 serve audited balance sheets.

3 MR. SAYLES: Well, I guess under that caveat --

4 THE COURT: And you're now on the record as saying  
5 just order what Godson --

6 MR. SAYLES: Well, no, Your Honor. I understand  
7 Godson to require that information, but I think the audit  
8 aspect was incidental.

9 THE COURT: Well, you talked to Judge Schroeder about  
10 that?

11 MR. SAYLES: I didn't.

12 THE COURT: Well, if you know Judge Schroeder, he  
13 doesn't order incidental information.

14 MR. SAYLES: Well, I don't mean his statement was  
15 incidental. What was presented to him were financials that  
16 happened to be audited.

17 THE COURT: No, I don't think anything was presented  
18 to him. I think that is what was at issue. He was asked to  
19 allow for production. Where is that decision? Oh, I see your  
20 point. The defendant agreed to reproduce a copy -- agreed to  
21 produce a company of its audited balance sheets subject to a  
22 protective order. Why was there a motion in front of him?  
23 Oh, I see, because the plaintiff wanted more, apparently.

24 MR. SAYLES: Your Honor, incidentally, I don't have  
25 the specific case, but the documents I'm speaking about have

1 been accepted in the Eastern District of New York case subject  
2 to a confidentiality order on behalf of Cohen and Slamowitz as  
3 to their net worth. I don't have that matter before me, but I  
4 can't tell you they have been submitted in other litigations.

5 THE COURT: So, you're -- what you mean by so -- so,  
6 this puts some meat on the bones here about the incidental  
7 aspect of Judge -- what you're really saying is that he didn't  
8 reach the merits of the question of whether audited was  
9 required because of the defendant's proffer?

10 MR. SAYLES: They haven't -- they were already in  
11 existence. It wasn't the issue of whether they had to --

12 THE COURT: All right. Well, that's good enough. I  
13 think so. So, what authority do you have that they have to be  
14 audited under the FDCPA?

15 MR. BROMBERG: Well, it would just be -- well, the  
16 leading case on the entire issue is the 7th Circuit case of  
17 Sanders v. Jackson which says that net worth is book value net  
18 worth --

19 THE COURT: Not market value.

20 MR. BROMBERG: -- Not market value. Now, the  
21 question is what is the book value.

22 THE COURT: That's excluding good will.

23 MR. BROMBERG: Well, actually, that's a frequent  
24 misreading of Sanders v. Jackson.

25 THE COURT: Well, I don't know. I've read it a

1 couple times. I couldn't see any way around it.

2 MR. BROMBERG: Now, there's some loose language in  
3 there and this is entirely aside --

4 THE COURT: I know, I know. Go ahead. Make your  
5 point. We have to move on.

6 MR. BROMBERG: Okay, okay. My point though is there,  
7 they actually had books and I don't think they indicated one  
8 way or another whether they were audited. I'd have to go back  
9 and look. I'd have to go back and double check. I haven't  
10 read Sanders v. Jackson in a couple months, but the  
11 question -- there is a key question here if all we're getting  
12 is something coming from their accountant, that is, by its  
13 nature, something that's not -- that hasn't been examined by a  
14 third party.

15 It's been examined by a party that's been hired by  
16 and works frequently with the defendant and there's no clarity  
17 on what's actually there. Unless we, ourselves, can examine  
18 the underlying documents, we have no way of relying on what's  
19 been presented to us by their own accountants.

20 THE COURT: What case says that you're entitled to  
21 more than what Judge Schroeder provided?

22 MR. BROMBERG: Well, Judge Schroeder said audited.

23 THE COURT: Well, no. I mean, you're saying that if  
24 they were audited, then you wouldn't have made all these  
25 document requests and interrogatory demands?

1 MR. BROMBERG: If they were audited, we'd be hard-  
2 pressed to go far beyond maybe asking for say, three years of  
3 tax returns with schedules. I think if they produced audited  
4 tax returns, it makes it very difficult to argue against the  
5 book value net worth as represented in the audited tax  
6 returns. I had this come up on a case recently where the  
7 defendants produced audited returns and we basically decided  
8 we weren't going to fight what was on the audited returns.  
9 You're not going to -- you know --

10 THE COURT: Well, you can see from the Court's point  
11 of view that we, you know -- your discovery requests do  
12 challenge the notion of creating satellite litigation in which  
13 you're attempting to second guess, for example, the tax  
14 returns, which was the issues in the Malo (phonetic), case in  
15 the Eastern District.

16 MR. SAYLES: Your Honor, if I may add, in Godson,  
17 Judge Schroeder cites to Miller vs. Abrams, Eastern District  
18 of New York case rejecting discovery demands effectively  
19 seeking to audit defendant's tax returns. What Mr. Bromberg  
20 just explained, he's effectively seeking to perform his own  
21 audit of their returns. So, we've got an Eastern District  
22 case cited by --

23 THE COURT: Well, that's it. There's more than an  
24 echo of concern among judicial officers who have confronted  
25 the issue about opening the door into collateral litigation

1 less than 50,000 to photocopy the documents that we've asked  
2 for, turn them over, we go to our account and have them look  
3 at them.

4 THE COURT: Point made.

5 MR. SAYLES: But those are -- there's a breadth of  
6 information that there's some entitlement of confidentiality  
7 and privacy because especially where the defendants are sued  
8 for --

9 THE COURT: No, that's -- no, no, no. We have a  
10 confidential agreement. It's not an issue.

11 MR. SAYLES: But the case law that exists does not  
12 require more than production of the returns. I know Godson  
13 didn't have happen to involve a (sic) audited financial, but  
14 it wasn't the threshold. Nothing in that decision suggests  
15 that the audited nature of those financials --

16 (An off-the-record discussion was held.)

17 THE COURT: One of the cases is cited by Judge  
18 Schroeder, I forget which, I think it's Malo, it refers to  
19 financial documents. It doesn't actually say what Judge  
20 Schroeder says it says about tax returns. Oh, it says and  
21 financial report. Excuse me, he did get it right. Yes, he  
22 did. Of course he did. So, we don't know though, in that  
23 case, whether those documents were audited or not.

24 MR. BROMBERG: Actually, it was my case, Your Honor.

25 THE COURT: That's right. It was. I remember that.



1 MR. BROMBERG: It was Arrow Financial.

2 THE COURT: Remember I said I saw that? It's the  
3 same guy. He's all over the place.

4 MR. BROMBERG: It's the Arrow case. It was  
5 Magistrate Levy, Eastern District. It was a pretty major-  
6 sized firm. I can't remember whether the financials were  
7 audited or not. It was Arrow Financial which is one of the  
8 largest debt collectors in the country, which has since been  
9 acquired by Sallie Mae or Fanny Mae, Sallie Mae, right and now  
10 they're worth even more.

11 THE COURT: Yeah. We've got to move on. Here is my  
12 ruling for the day: We are going to abide by Judge  
13 Schroeder's ruling. We are going to grant the -- I'm going to  
14 call it the net worth discovered request. We are going to  
15 grant the requests, including the associated document requests  
16 by directing the defendant C&S, not Midland, C&S, to provide  
17 audited financial statements for the relevant years for the  
18 relevant period. Are you sure about this now, Mr. -- for  
19 purposes of discovery, Mr. Bromberg, one year only?

20 MR. BROMBERG: Well, the problem is that the case law  
21 is not clear on whether you determine the net worth as --

22 THE COURT: Will I be clearly erroneous if I required  
23 them to provide for a year prior to the relevant year and a  
24 year subsequent thereto, which would conclude 2013?

25 MR. BROMBERG: That's fine.

1 MR. SAYLES: The cost in that could be upwards of 150  
2 to \$200,000 if you're including three years.

3 THE COURT: Well, you don't know that.

4 MR. SAYLES: Well, we don't know that at all at this  
5 point.

6 THE COURT: And it might be substantially less. I  
7 mean, the way -- I'm not pointing the finger at anybody,  
8 Mr. Sayles, but in a way, the Court's being asked to try to  
9 nail jelly to the wall and it's just not fair and I've got to  
10 put some burden on the defendant here because in effect you're  
11 saying, you know, look, you know, take it or leave it, you  
12 know? Whatever we give you, that's it. You're not entitled  
13 to --

14 MR. SAYLES: I'm not saying that.

15 THE COURT: I'm not telling -- I'm not permitting  
16 them to do the auditing that you're resisting. I'm giving you  
17 the chance to do your own auditing by directing that you  
18 provide audited financial statements and tax returns,  
19 corporate partnership tax returns for the -- what is the year  
20 before again? I've got to get this right.

21 MR. BROMBERG: 2011 to 2012, Your Honor is the range  
22 of the class that's been served.

23 THE COURT: And the -- for purposes of discovery,  
24 2010 to 2011 on the back side and on the front side, 2012 to  
25 2013. I'm assuming their fiscal year is the calendar year.

1 MR. SAYLES: Your Honor, if that's the order, is  
2 there a possibility --

3 THE COURT: Just a second. Let me finish. So, we're  
4 going to order audited financials for those calendar years  
5 2010 to 2011, 2011-2012, 2012-2013 and we're going to require  
6 those to be financial -- excuse me, balance sheets, income  
7 statements, profit and loss statements, cash flow statements  
8 and current trial balance for the defendant's current fiscal  
9 year. That would be the first quarter of 2014.

10 MR. SAYLES: If I may, Your Honor, is there an out --  
11 given that ruling or that instruction, is there an option that  
12 would give Cohen and Slamowitz the option to produce the  
13 documents to plaintiff in lieu of its incurring that  
14 expensive --

15 THE COURT: The requested documents?

16 MR. SAYLES: Because I don't want to speak -- I don't  
17 know. It's a substantial sum that's been imposed on them.

18 THE COURT: Well, I mean --

19 MR. SAYLES: And Your Honor, I don't --

20 THE COURT: You know what my reaction to that is,  
21 Mr. Sayles? In your -- you've been practicing long enough and  
22 I'm sure Mr. Leghorn and the other lawyers are, this  
23 information is probably the information that a competent, in-  
24 house accountant or outside accountant would have at his or  
25 her fingertips if they were charged with the responsibility of

1 preparing a competently-prepared balance sheet only.

2 MR. SAYLES: This doesn't have to be audited by an  
3 independent third party?

4 THE COURT: You figure it out. I'm using the word  
5 audited as commonly referred to and if there's a way to do it  
6 in and a way that's satisfactory to the plaintiff, you work it  
7 out with them and that's it. If there's an alternative you  
8 want to explore --

9 MR. SAYLES: That's as to the Cohen and Slamowitz LLP  
10 only, correct?

11 THE COURT: Yes. Okay? Did you get that, Sandra?  
12 That's it. That disposes of a number of requests,  
13 Mr. Bromberg?

14 MR. BROMBERG: Yes, many.

15 MR. SAYLES: Your Honor, was there a timeframe set on  
16 that?

17 THE COURT: Not yet. Timeframe -- I want to get the  
18 numbers down here for the record.

19 MR. BROMBERG: That covers Request for Production 19  
20 through 49 with the exception of 24 and 25.

21 THE CLERK: What were those, 19 through?

22 MR. BROMBERG: 19 through 49, but not 24 and 25.

23 THE COURT: And interrogatories?

24 MR. BROMBERG: Interrogatories, no.

25 THE COURT: Well, yes, 19 to 24 interrogatories.

1 MR. BROMBERG: Oh, excuse me. Sorry, 19 to 24. I'm  
2 sorry, Your Honor, you're right.

3 THE COURT: Thank you. All right. Anybody need a  
4 break?

5 MR. SAYLES: And just if I may, I believe --

6 THE COURT: Oh, the timeframe. Ninety days,  
7 Mr. Bromberg?

8 MR. BROMBERG: That's fine, Your Honor.

9 THE COURT: Ninety days, Mr. Sayles?

10 MR. SAYLES: I don't want to speak out of turn. I  
11 don't know what timeframe the accountant would require. I  
12 imagine at least the month of April through the next two weeks  
13 is shot for the accountant, but 90 days would be time to at  
14 least inquire and urge that. Although, Judge, I believe the  
15 requests that were presented here were documents that they  
16 relied upon in forming their net worth value that they  
17 reflected.

18 I mean, now we've got three years. Cohen and  
19 Slamowitz have got audited financials for three years,  
20 including a year that's not even within the class that's been  
21 certified here.

22 THE COURT: Why am I saying that? Because I'm  
23 looking at it from a discovery point of view which is to test  
24 the -- well, you know, Mr. Bromberg, now that I think about  
25 it, maybe that's more than you really need, now that I think

1 about it on reflection. If they're audited, why wouldn't that  
2 one year be good enough?

3 MR. BROMBERG: Well, the only issue really becomes  
4 that --

5 THE COURT: I know I'm asking you a difficult  
6 question despite your vast experience in this, but we're  
7 dealing in uncharted waters here.

8 MR. BROMBERG: Okay. The problem is, it's not clear  
9 from the case law what point you measure the net worth for  
10 purposes of the cap; whether it's the date of the violations  
11 or the date that the case actually goes to trial.

12 THE COURT: I was thinking more a matter of the trier  
13 of fact trying to figure out what the right number is and it  
14 could be that an expert accountant would say, Judge, you  
15 really need a time frame within which to make a judgment based  
16 on an opinion that somebody would give after looking at these  
17 things.

18 An opinion might be that it was just the one year,  
19 that's good enough, but an opinion from a forensic accountant  
20 might be, you know, we needed to have the year prior and the  
21 year following in order to advise the trier of fact what the  
22 correct number really is. I mean, the fact that they claim it  
23 to be done with -- under general accounting principals, would  
24 that prevent you from challenging that? I don't think so.  
25 It's going to be the trier of the fact will decide. So, just

1 as we do in other discovery context, typically we ask for some  
2 timeframe in order to help us achieve some reasonable accuracy  
3 as to what the underlying fact really is. So, that's why I am  
4 tempted to -- intending to do what I've just already said I  
5 think we should do.

6 MR. BROMBERG: No, I think that makes sense. I think  
7 that's -- I hadn't thought of it that way. I was thinking  
8 more of a legal question of when you fixed that.

9 THE COURT: Well, it's a discovery dispute. I'm not  
10 attempting to fix liability here.

11 MR. BROMBERG: No, I think that makes sense that you  
12 need one year before and one year after to make sure that what  
13 you're seeing --

14 THE COURT: Whatever the number is for the relevant  
15 period is the correct number.

16 MR. BROMBERG: Right.

17 THE COURT: That's my thinking, Mr. Sayles. If you  
18 want to come up with something else by some agreement with  
19 Mr. Bromberg after the proceeding is over with, you go right  
20 ahead.

21 MR. SAYLES: Well, no more in any of the other cases  
22 on this point have I seen any discussion of looking at years  
23 in a bracket. It was net worth for financial records for the  
24 given year. I just -- it's been explained unduly and I think  
25 it's overly prejudicial and burdensome to my client.

1 THE COURT: Yeah, but it makes sense, does it?

2 MR. SAYLES: I respectfully disagree.

3 THE COURT: I mean, really, I mean, it's a question  
4 of fact as to what is the net worth during the relevant  
5 timeframe and what -- your theory is that they'll never be an  
6 accountant in the whole world who would ever say if they had  
7 an audited financial statement for a particular year by  
8 another accountant that that number, in their opinion, is the  
9 correct number and it that they would never need to see a  
10 bracketed set of years before and after.

11 MR. SAYLES: Well, we're not preparing a general  
12 market value. We're looking at a net worth for the year. I  
13 mean, we're not getting into multiple years and then you're  
14 almost the value of the basis generally. You know, this is --

15 THE COURT: No, I'm talking about accuracy here.

16 MR. SAYLES: Well, then I don't see what -- the  
17 letter here was issued in 2000 --

18 THE COURT: Well, let's try this. Are you agreeable  
19 to doing the audited statement for the one year?

20 MR. SAYLES: No, I'm not.

21 THE COURT: Oh, okay then. We're going to do it for  
22 three.

23 MR. SAYLES: Your Honor, I just can't -- it's a big  
24 obligation to take on for my client.

25 THE COURT: If I'm wrong, Judge Skretny will correct



1 me on your request. All right. Let's move on to the next  
2 issue, Mr. Bromberg.

3 MR. BROMBERG: Okay. The next issue would be covered  
4 by Request for Production 11, 12 and 15 to Cohen and  
5 Slamowitz.

6 THE COURT: Okay. And I'll see those where, please?

7 MR. BROMBERG: Pulling them up right now, Your Honor.  
8 That's page 40 of 52 and page 41 of 52.

9 THE COURT: What document, please?

10 MR. BROMBERG: Oh, sorry. It's Document 73-1.

11 THE COURT: Page what again, please?

12 MR. BROMBERG: Page 40 of 52 and page 41 of 52.

13 THE COURT: Where are we?

14 MR. BROMBERG: 11, 12 and 15.

15 THE COURT: All documents concerning plaintiff's debt  
16 to Midland vague, ambiguous, overbroad, notwithstanding  
17 documents are provided; 12, all communications to and from  
18 plaintiff's attorneys, agents acting on plaintiff's behalf  
19 response vague, ambiguous, overbroad, notwithstanding  
20 documents responsive are attached; 15, all documents without  
21 limitation, computer records related to plaintiff retrievable  
22 under any number assigned to plaintiff by defendant. Objects  
23 vague, et cetera, notwithstanding, they produced.

24 MR. BROMBERG: Okay. Well, Your Honor, there are a  
25 number of documents that the defendants have produced, but